

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SANDY RASCHKE,) Case No.: 2:10-cv-2120-GMN-PAL
)
Plaintiff,) **ORDER**
vs.)
)
ALLSTATE PROPERTY & CASUALTY)
INSURANCE COMPANY, a Foreign)
Corporation; and ROE CORPORATIONS,)
I through X, inclusive,)
)
Defendant.)

INTRODUCTION

Before the Court is Plaintiff's Motion to Remand this case to state court (ECF No. 5). Defendant filed a Response on December 23, 2010 (ECF No. 6) and Plaintiff filed a Reply on December 27, 2010 (ECF No. 7).

For the following reasons the Court GRANTS Plaintiff's Motion to Remand.

FACTS AND BACKGROUND

This suit arises from a dispute between Plaintiff and Defendant, Allstate Property & Casualty Insurance Company, regarding the payment of a policy limit following Plaintiff's injury in an automobile accident. Plaintiff claims to have incurred medical expenses in excess of \$54,000.00. Plaintiff has received insurance payments from tortfeasor and workers compensation benefits which total \$34,895.70. Plaintiff holds a policy of insurance with Defendant for uninsured/underinsured motorist's (UIM) limit of \$15,000.00. Plaintiff made only a \$15,000.00 settlement demand for the UIM limits but Defendant did not tender the amount.

1 Plaintiff filed her Complaint on October 22, 2010, in the Eighth Judicial District
2 Court of the State of Nevada. Plaintiff's Complaint alleged: 1) Breach of Contract;
3 2) Breach of the Covenant of Good Faith and Fair Dealing; and 3) Violation of the Unfair
4 Claims Practices Act. Plaintiff's claims for relief pray for general damages in excess of
5 \$10,000.00, special damages, punitive damages in excess of \$10,000.00 and attorney's
6 fees and costs.

7 **DISCUSSION**

8 **A. Motion to Remand**

9 "If at any time before final judgment it appears that the district court lacks subject
10 matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). District courts
11 have subject matter jurisdiction over civil actions where no plaintiff is a citizen of the
12 same state as a defendant and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §
13 1332(a). A civil action brought in state court may be removed by the defendants to a
14 federal district court if the district courts have original jurisdiction over the matter. 28
15 U.S.C. § 1441(a).

16 Removal statutes are strictly construed against removal jurisdiction. *Ritchey v.*
17 *Upjohn Drug Co.*, 139 F.3d 1313, 1317 (9th Cir. 1998); *Gaus v. Miles*, 980 F.2d 564, 566
18 (9th Cir. 1992). "Federal jurisdiction must be rejected if there is any doubt as to the
19 right of removal in the first instance." *Id.* (quoting *Libhart v. Santa Monica Dairy Co.*,
20 592 F.2d 1062, 1064 (9th Cir. 1979)). The defendant always has the burden of
21 establishing that removal is proper. *Gaus*, 980 F.2d at 566.

22 Plaintiff's Complaint does not allege damages in excess of \$75,000.00. Plaintiff
23 only alleges that she is entitled to UIM benefits of \$15,000.00 but additionally seeks
24 general damages in excess of \$10,000.00 due to the harm Plaintiff suffered as a result of
25 Defendant's withholding of the UIM benefits. Plaintiff also alleges that she is entitled to

1 punitive damages for bad faith in excess of \$10,000.00. Defendant removed speculating
2 that punitive damages could exceed \$75,000.00. Defendant further argues in its
3 Response that if Plaintiff were to prevail under the N.R.S. 686A.310 Plaintiff would be
4 entitled to an award of attorney's fees.

5 However, there is no authority in Nevada law indicating N.R.S. 686A.310
6 mandates an award of attorney's fees. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150,
7 1155 (9th Cir. 1998) (When there is no direct legal authority for attorney's fees, a request
8 for a fee cannot be included in the computation of the jurisdictional amount.) Thus the
9 only question is whether it is likely that punitive damages would exceed \$50,000.00.

10 Defendant must prove, by a preponderance of the evidence, that the amount in
11 controversy meets the jurisdictional threshold since it is not facially evident from the
12 complaint that more than \$75,000.00 is in controversy. *Valdez v. Allstate Ins. Co.*, 372
13 F.3d 115, 117 (9th Cir. 2004); *see also Sanchez v. Monumental Life Ins. Co.*, 102 F.3d
14 398, 403-04 (9th Cir.1996). Defendant's Petition for Removal states that if punitive
15 damages are awarded they would exceed \$10,000.00 and have the potential to exceed
16 \$75,000.00. In support, Defendant merely states that based upon the identity of the
17 attorneys for the Plaintiff there is a potential for punitive damages to exceed damages in
18 excess of \$50,000.00. Defendant cites to *Woodward v. Newcourt Commercial Financial*
19 *Corporation*, 60 F.Supp.2d 530, 532 (D. S.C. 1999) to explain that since "plaintiff's bar
20 rarely seeks less than ten times damages' and that it is not uncommon for juries to award
21 more than ten times damages when assessing punitive damages against a corporation"
22 this is sufficient evidence to warrant removal jurisdiction. This Court is not persuaded by
23 *Woodward's* "inverse legal certainty test" as it would seem to limit the strict construction
24 requirement and remove the burden of proof from the defendant. To discharge its burden
25 in the Ninth Circuit, Defendant must "provide evidence establishing that it is 'more likely

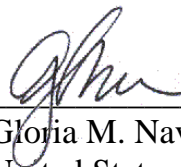
1 than not' that the amount in controversy exceeds that amount." *Valdez*, 372 F.3d at 117;
2 *see also Gaus*, 980 F.2d at 566-67.

3 Defendant in this case has failed to meet its burden of establishing that the amount
4 in controversy exceeds the jurisdictional amount of \$75,000.00. Mere speculation that
5 this case has the potential to reach punitive damages in excess of \$50,000.00 is not
6 sufficient. Accordingly the case will be remanded to state court.

7 **CONCLUSION**

8 IT IS HEREBY ORDERED that Plaintiff's Motion to Remand is GRANTED.

9 DATED this 10th day of January, 2011.

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13 Gloria M. Navarro
14 United States District Judge
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